

AMENDED IN SENATE JULY 1, 2014
AMENDED IN SENATE JUNE 17, 2014
AMENDED IN ASSEMBLY MAY 23, 2014
AMENDED IN ASSEMBLY APRIL 2, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1877

Introduced by Assembly Member Cooley
(Coauthors: Assembly Members Dickinson, Beth Gaines, and Pan)
(Coauthor: Senator Gaines)

February 19, 2014

An act to add Title 22.1 (commencing with Section 100600) to the Government Code, relating to health care coverage, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1877, as amended, Cooley. California Vision Care Access Council.

Existing law, the federal Patient Protection and Affordable Care Act, requires each state to establish an American Health Benefits Exchange to facilitate the purchase of qualified health plans by qualified individuals and small employers. PPACA prohibits an Exchange from making available any health plan other than a qualified health plan, except for certain stand-alone dental plans. Existing state law establishes the California Health Benefit Exchange within state government, specifies the powers and duties of the board governing the Exchange, and requires the board to facilitate the purchase of qualified health plans

through the Exchange by qualified individuals and small employers by January 1, 2014.

This bill would establish the California Vision Care Access Council within state government and would require that the Council be governed by the executive board that governs the California Health Benefit Exchange. The bill would require the Council to establish an interagency agreement with the California Health Benefit Exchange allowing the Council to utilize the executive, administrative, and other related resources of the Exchange and would prohibit the use of specified Exchange funds for purposes of the Council. The bill would require the Council to construct, manage, and maintain a marketplace for the purchase of vision plans through participating carriers by qualified individuals and qualified employers and would require the Council to facilitate enrollment of those individuals and employers in plans offered by the Council through licensed insurance agents. The bill would require the Council to work with the Exchange to establish a direct link between the Internet Web site of the Exchange and the Internet Web site of the Council in order to connect consumers of the Exchange to the marketplace established by the Council and to licensed insurance agents. The bill would require the Council to refer consumer questions regarding health care eligibility and enrollment options to the Exchange and to licensed insurance agents, as specified.

This bill would impose specified requirements on participating carriers and would also require the Council to establish other requirements for carrier participation in the marketplace and the standards and criteria for selecting vision plans that are in the best interests of qualified individuals and employers. The bill would require a participating carrier to submit a justification for a premium increase to the Council prior to implementing the increase and make available to consumers an electronic directory of contracting vision care providers. The bill would also enact other related provisions.

This bill would create the California Vision Care Access Trust Fund as a continuously appropriated fund, thereby making an appropriation, would authorize the Council to assess a charge on the vision plans offered by participating carriers through the Council that is reasonable and necessary to support the development, operations, and prudent cash management of the Council, and would make the implementation of the bill's provisions contingent on a determination by the board that at least \$250,000 exists in the fund. The bill would prohibit General Fund moneys from being used for any of these purposes and would require

that any costs associated with the implementation of these provisions be paid from the California Vision Care Access Trust Fund.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 California Vision Care Access Act.

3 SEC. 2. It is the intent of the Legislature to make the statutory
4 changes to California law necessary to establish a Vision Care
5 Access Council in California in a manner that is consistent with
6 the rules, regulations, and guidance implementing the federal
7 Patient Protection and Affordable Care Act (Public Law 111-148),
8 as amended by the federal Health Care and Education
9 Reconciliation Act of 2010 (Public Law 111-152), hereafter the
10 federal act. In doing so, it is the intent of the Legislature to do all
11 of the following:

12 (a) Provide Californians an organized, transparent marketplace
13 for the purchase of affordable, quality vision care coverage,
14 augmenting and supplementing the essential health benefits
15 available through the California Health Benefit Exchange.

16 (b) Guarantee the availability of vision coverage through the
17 private health insurance market to qualified individuals and
18 employees of qualified employers.

19 (c) Offer specialized vision health care service plan and health
20 insurance coverage in the individual and group markets on the
21 basis of price, quality, and service.

22 (d) Meet the requirements of the federal act and all applicable
23 federal guidance, rules, and regulations.

24 SEC. 3. Title 22.1 (commencing with Section 100600) is added
25 to the Government Code, to read:

26
27 TITLE 22.1. CALIFORNIA VISION CARE ACCESS
28 MARKETPLACE
29

30 100600. For purposes of this title, the following definitions
31 shall apply:

1 (a) “Board” means the board described in subdivision (a) of
2 Section 100601.

3 (b) “Carrier” means either a private health insurer holding a
4 valid outstanding certificate of authority from the Insurance
5 Commissioner or a health care service plan, as defined under
6 subdivision (f) of Section 1345 of the Health and Safety Code,
7 licensed by the Department of Managed Health Care.

8 (c) “Council” means the Vision Care Access Council created
9 by Section 100601.

10 (d) “Exchange” means the California Health Benefit Exchange
11 established by Section 100500.

12 (e) “Federal act” means the federal Patient Protection and
13 Affordable Care Act (Public Law 111-148), as amended by the
14 federal Health Care and Education Reconciliation Act of 2010
15 (Public Law 111-152), and any amendments to, or regulations or
16 guidance issued under, those acts.

17 (f) “Fund” means the California Vision Care Access Trust Fund
18 established by Section 100620.

19 (g) “Licensed agent” means an individual licensed by the
20 Department of Insurance pursuant to Section 1626 of the Insurance
21 Code.

22 (h) “Marketplace” means the marketplace established under
23 Section 100603.

24 (i) *“Preexisting condition provision” means a policy provision*
25 *that excludes coverage for charges or expenses incurred during*
26 *a specified period following the insured’s effective date of*
27 *coverage, as to a condition for which medical advice, diagnosis,*
28 *care, or treatment relating to vision was recommended or received*
29 *during a specified period immediately preceding the effective date*
30 *of coverage.*

31 ~~(i)~~

32 (j) “Qualified individual” means an individual who is eligible
33 to purchase coverage through the Exchange.

34 ~~(j)~~

35 (k) “Qualified employer” means an employer that is eligible to
36 purchase coverage through the Exchange.

37 ~~(k)~~

38 (l) “Vision plan” means a specialized health care service plan
39 contract, as defined in Section 1345 of the Health and Safety Code,
40 covering vision care services or a specialized health insurance

1 policy, as defined in Section 106 of the Insurance Code, covering
2 vision care services.

3 100601. (a) There is in the state government the California
4 Vision Care Access Council, an independent public entity not
5 affiliated with an agency or department, which shall be known as
6 the Council. The Council shall be governed by the executive board
7 established pursuant to Section 100500. The board shall be subject
8 to Section 100500.

9 (b) (1) To the extent permitted by the federal act, the Council
10 shall establish an interagency agreement with the Exchange
11 allowing the Council to utilize the executive, administrative, and
12 other related resources of the Exchange, including, but not limited
13 to, the staff employed by the Exchange and the programming and
14 information technology infrastructure supporting the Exchange.

15 (2) In addition to establishing an interagency agreement under
16 paragraph (1), the Council may establish interagency agreements
17 with other agencies for the purposes of contracting for executive,
18 administrative, and other related services, if necessary.

19 (c) Each member of the board shall have the responsibility and
20 duty to meet the requirements of this title, the federal act, and all
21 applicable state and federal laws and regulations, to serve the public
22 interest of the individuals and small businesses seeking health care
23 coverage through the Council, and to ensure the operational
24 well-being and fiscal solvency of the Council.

25 (d) There shall not be any liability in a private capacity on the
26 part of the board or any member of the board, or any officer or
27 employee of the board, for or on account of any act performed or
28 obligation entered into in an official capacity, when done in good
29 faith, without the intent to defraud, and in connection with the
30 administration, management, or conduct of this title or affairs
31 related to this title.

32 (e) A member of the board or staff of the Council shall not be
33 employed by, a consultant to, a member of the board of directors
34 of, affiliated with, or otherwise a representative of, an optical
35 company that manufactures, sells, or distributes lenses, frames, or
36 other vision care appliances.

37 100603. The Council shall, at a minimum, do all of the
38 following:

39 (a) Construct, manage, and maintain a marketplace for the
40 purchase of vision plans through participating carriers by qualified

1 individuals and qualified employers. The marketplace shall offer
2 full and complete carrier information to consumers, shall ensure
3 a secure purchase functionality, and shall allow enrollees and
4 prospective enrollees to obtain standardized comparative
5 information on the plans offered through the marketplace.

6 (b) Maintain an Internet Web site, separate from the Internet
7 Web site established by the Exchange, through which enrollees
8 and prospective enrollees of vision plans may obtain standardized
9 comparative information on the plans offered in the marketplace.

10 (c) Work cooperatively with the Exchange to establish a direct
11 link from the Internet Web site maintained by the Exchange to an
12 Internet Web site maintained by the Council to connect Exchange
13 consumers to the marketplace and to licensed agents.

14 (d) Make the marketplace available to individuals without access
15 to the Internet.

16 (e) Determine the minimum requirements a carrier shall meet
17 to be considered for participation in the marketplace, and the
18 standards and criteria for selecting vision plans to be offered
19 through the marketplace that are in the best interests of consumers.
20 The board shall consistently and uniformly apply these
21 requirements, standards, and criteria to all carriers. In the course
22 of selectively contracting for vision coverage offered to qualified
23 individuals and qualified employers through the Council, the board
24 shall seek to contract with carriers so as to provide vision coverage
25 choices that offer the optimal combination of choice, value, quality,
26 and service. The requirements adopted pursuant to this subdivision
27 shall, at a minimum, include the following:

28 (1) A requirement that a carrier meet a minimum net asset
29 threshold as determined by the Council to ensure that it is both
30 well established and can demonstrate that it offers a proven model
31 for providing vision care coverage in California. The Council may
32 also consider the usefulness of setting a minimum annual premium
33 revenue as evidence of the soundness of the carrier.

34 (2) A requirement that a carrier have, and continuously maintain,
35 an established Internet Web site.

36 (3) A requirement that a carrier demonstrate to the Council
37 adequate vision care coverage networks sufficient to ensure
38 convenient geographic access to vision care in California.

1 (4) A requirement that a carrier demonstrate to the Council
2 adequate, multilingual consumer service and benefit delivery
3 capabilities.

4 (5) Any other requirements determined necessary by the board
5 based on input from health care consumer advocacy organizations,
6 representatives of the optometry and ophthalmology industries,
7 health insurers, health care service plans, and licensed agents.

8 (f) Require vision plans offered in the marketplace to do both
9 of the following:

10 (1) (A) Make available to the public, and the Insurance
11 Commissioner or the Department of Managed Health Care, as
12 applicable, accurate and timely disclosure of the following
13 information:

14 (i) Claims payment policies and practices.

15 (ii) Periodic financial disclosures.

16 (iii) Data on enrollment.

17 (iv) Data on disenrollment.

18 (v) Data on the number of claims that are denied.

19 (vi) Information on cost sharing and payments with respect to
20 any out-of-network coverage.

21 (B) The information required under subparagraph (A) shall be
22 provided in plain language.

23 (2) Permit individuals to learn, in a timely manner upon the
24 request of the individual, the amount of cost sharing, including,
25 but not limited to, deductibles, copayments, and coinsurance, under
26 the individual's plan or coverage that the individual would be
27 responsible for paying with respect to the furnishing of a specific
28 item or service by a participating provider. At a minimum, this
29 information shall be made available to the individual through an
30 Internet Web site, through licensed agents, and through other means
31 for individuals without access to the Internet.

32 (g) Provide for the operation of a toll-free telephone hotline to
33 respond to requests for assistance.

34 (h) Establish and make available by electronic means a
35 calculator to determine the actual cost of a vision plan for a
36 consumer.

37 (i) Conduct public education activities to raise awareness of the
38 availability of vision plans through the Council.

39 (j) Distribute fair and impartial information concerning
40 enrollment in coverage offered through the Council.

1 (k) Facilitate enrollment of qualified individuals and qualified
2 employers in vision plans offered through the Council by licensed
3 agents.

4 (l) Provide referrals to any applicable office of health insurance
5 consumer assistance or health insurance ombudsman, or any other
6 appropriate state agency or agencies, for any enrollee with a
7 grievance, complaint, or question regarding a participating carrier,
8 coverage purchased pursuant to this title, or a determination by
9 the carrier or under that coverage.

10 (m) Provide information in a manner that is culturally and
11 linguistically appropriate to the needs of the population being
12 served by the Council using the services of licensed agents.

13 (n) Undertake activities necessary to market and publicize the
14 availability of vision plans through the Council, ensuring clear
15 communication to consumers that federal subsidies are not
16 available for this coverage. The board shall also undertake outreach
17 and enrollment activities using licensed agents to assist enrollees
18 and potential enrollees with enrolling and reenrolling in the
19 coverage offered by the Council in the least burdensome manner,
20 including populations that may experience barriers to enrollment,
21 such as the disabled and those with limited English language
22 proficiency.

23 (o) Employ necessary staff to the extent not provided pursuant
24 to the interagency agreements established under Section 100601.

25 (p) Assess a charge on the vision plans offered by participating
26 carriers through the marketplace that is reasonable and necessary
27 to support the development, operations, and prudent cash
28 management of the Council.

29 (q) Authorize expenditures, as necessary, from the fund to pay
30 program expenses to administer the Council.

31 (r) Keep an accurate accounting of all activities, receipts, and
32 expenditures, and annually publish a report concerning that
33 accounting.

34 (s) (1) Annually publish a report on the implementation and
35 performance of the Council functions during the preceding fiscal
36 year, that shall be made available to the public on the Internet Web
37 site of the Council.

38 (2) In addition to the report described in paragraph (1), the
39 Council shall be responsive to requests for additional information

1 from the Legislature, including providing testimony and
2 commenting on proposed state legislation or policy issues.

3 (t) Exercise all powers reasonably necessary to carry out and
4 comply with the duties, responsibilities, and requirements of this
5 act.

6 (u) Consult with stakeholders relevant to carrying out the
7 activities under this title, including, but not limited to, all of the
8 following:

9 (1) Health care consumers who are enrolled in vision plans.

10 (2) Individuals and entities with experience in facilitating
11 enrollment in vision plans.

12 (3) Representatives of small businesses and self-employed
13 individuals.

14 (4) Licensed agents.

15 (v) Require participating carriers to regularly, as determined by
16 the Council, provide the Council with enrollment or disenrollment
17 data.

18 (w) Ensure that the Council provides oral interpretation services
19 in any language for individuals seeking coverage through the
20 Council and makes available a toll-free telephone number for the
21 hearing and speech impaired. The Council shall ensure that written
22 information made available by the Council is presented in a plainly
23 worded, easily understandable format and made available in
24 California's prevalent languages.

25 (x) Provide a choice of carrier in each region of the state.

26 (y) (1) Require, as a condition of participation in the Council,
27 carriers that sell vision products outside the Council to do ~~both~~ *all*
28 of the following:

29 (A) Fairly and affirmatively offer, market, and sell all products
30 made available to individuals in the marketplace to individuals
31 purchasing coverage outside the Council. The products available
32 to individuals in the marketplace shall be the same individual
33 products as offered outside the Council through licensed agents.

34 (B) Fairly and affirmatively offer, market, and sell all products
35 made available to employers in the marketplace to employers
36 purchasing coverage outside the Council. The products available
37 to employers in the marketplace shall be the same employer
38 coverage products as offered outside the Council through licensed
39 agents.

1 (C) *Not impose any preexisting condition provision upon any*
2 *enrollee.*

3 (D) *Fairly and affirmatively offer, market, and sell all products*
4 *to all employers, individuals, and dependents in each service area*
5 *in which the carrier provides or arranges for vision care services*
6 *through the Council.*

7 (2) For purposes of this subdivision, “product” does not include
8 contracts entered into pursuant to Part 6.2 (commencing with
9 Section 12693) of Division 2 of the Insurance Code between the
10 Managed Risk Medical Insurance Board and carriers for enrolled
11 Healthy Families beneficiaries or contracts entered into pursuant
12 to Chapter 7 (commencing with Section 14000) of, or Chapter 8
13 (commencing with Section 14200) of, Part 3 of Division 9 of the
14 Welfare and Institutions Code between the State Department of
15 Health Care Services and carriers for enrolled Medi-Cal
16 beneficiaries.

17 (z) Determine and approve cost-sharing provisions for carriers.

18 (aa) Standardize products to be offered through the Council.

19 (ab) Share information with relevant state departments,
20 consistent with the confidentiality provisions in Section 1411 of
21 the federal act, necessary for the administration of the Council.

22 (ac) Collect only that information from individuals or designees
23 of individuals as is necessary to administer the Council and
24 consistent with the federal act.

25 100605. The Council may do any of the following:

26 (a) Enter into contracts.

27 (b) Adopt an official seal.

28 (c) Sue and be sued.

29 (d) Receive and accept gifts, grants, or donations of moneys
30 from any agency of the United States, any agency of the state, any
31 municipality, county, or other political subdivision of the state.

32 (e) Receive and accept gifts, grants, or donations from
33 individuals, associations, private foundations, or corporations, in
34 compliance with the conflict-of-interest provisions to be adopted
35 by the board at a public meeting.

36 (f) Adopt rules and regulations as necessary.

37 100606. (a) A participating carrier shall submit to the Council
38 a written justification for a premium increase prior to implementing
39 the increase.

1 (b) A participating carrier shall utilize a standardized format
2 for presenting vision plan options to the Council.

3 (c) The Council shall refer questions from consumers regarding
4 eligibility and enrollment options for Medi-Cal or through the
5 Exchange to the Exchange and to licensed agents.

6 (d) (1) The Council shall require a participating carrier to make
7 available to consumers and regularly update an electronic directory
8 of contracting vision care providers in the carrier's network.

9 (2) The Council may also require a participating carrier to
10 provide regularly updated information to the Council as to whether
11 a health care provider is accepting new patients for a particular
12 vision plan.

13 (3) The Council may provide an integrated and uniform
14 consumer directory of health care providers indicating which
15 participating carriers the providers contract with and whether the
16 providers are currently accepting new patients.

17 (4) The Council may establish methods by which health care
18 providers may transmit relevant information directly to the Council,
19 rather than through a participating carrier.

20 100607. (a) Notwithstanding any other ~~provision of~~ law, the
21 Council shall not be subject to licensure or regulation by the
22 Department of Insurance or the Department of Managed Health
23 Care.

24 (b) Carriers that contract with the Council shall have and
25 maintain a license or certificate of authority from, and shall be in
26 good standing with, their respective regulatory agencies.

27 (c) *Nothing in this title shall be construed to require a qualified*
28 *health plan offered through the Exchange to contract with the*
29 *Council in order to offer coverage for adult vision through the*
30 *Exchange.*

31 100609. Records of the Council that reveal any of the following
32 shall be exempt from disclosure under the California Public
33 Records Act (Chapter 3.5 (commencing with Section 6250) of
34 Division 7 of Title 1):

35 (a) The deliberative processes, discussions, communications,
36 or any other portion of the negotiations with entities contracting
37 or seeking to contract with the Council, entities with which the
38 Council is considering a contract, or entities with which the Council
39 is considering or enters into any other arrangement under which

1 the Council provides, receives, or arranges services or
2 reimbursement.

3 (b) The impressions, opinions, recommendations, meeting
4 minutes, research, work product, theories, or strategy of the board
5 or its staff, or records that provide instructions, advice, or training
6 to employees.

7 100620. (a) The California Vision Care Access Trust Fund is
8 hereby created in the State Treasury for the purpose of this title.
9 Moneys collected pursuant to this title shall be deposited in the
10 fund. Notwithstanding Section 13340, all moneys in the fund shall
11 be continuously appropriated without regard to fiscal year for the
12 purposes of this title. Any moneys in the fund that are unexpended
13 or unencumbered at the end of a fiscal year may be carried forward
14 to the next succeeding fiscal year.

15 (b) Notwithstanding any other law, moneys deposited in the
16 fund shall not be loaned to, or borrowed by, any other special fund
17 or the General Fund, or a county general fund or any other county
18 fund.

19 (c) The Council shall establish and maintain a prudent reserve
20 in the fund.

21 (d) The board or staff of the Council shall not utilize any funds
22 intended for the administrative and operational expenses of the
23 Council for staff retreats, promotional giveaways, excessive
24 executive compensation, or promotion of federal or state legislative
25 or regulatory modifications.

26 (e) Notwithstanding Section 16305.7, all interest earned on the
27 moneys that have been deposited into the fund shall be retained
28 in the fund and used for purposes consistent with the fund.

29 (f) (1) State General Fund moneys shall not be used for any
30 purpose under this title.

31 (2) Federal money paid to the state for the purpose of
32 establishing an American Health Benefit Exchange, as described
33 in Section 1311 of the federal act, and charges assessed by the
34 Exchange pursuant to subdivision (n) of Section 100503 of the
35 Government Code, shall not be used for purposes of this title.

36 (3) Any costs associated with the implementation of this title,
37 including, but not limited to, the proportionate cost of Exchange
38 resources used for purposes of this title, shall be paid from the
39 fund.

1 100621. (a) The implementation of the provisions of this title,
2 other than this section and Sections 100601, 100605, and 100620,
3 shall be contingent on a determination by the board that at least
4 two hundred fifty thousand dollars (\$250,000) exists in the fund.

5 (b) The board shall provide notice to the Joint Legislative Budget
6 Committee and the Director of Finance when the financial
7 threshold set forth in subdivision (a) has been reached.

8 SEC. 4. The Legislature finds and declares that Section 3 of
9 this act, which adds Section 100609 to the Government Code,
10 imposes a limitation on the public's right of access to the meetings
11 of public bodies or the writings of public officials and agencies
12 within the meaning of Section 3 of Article I of the California
13 Constitution. Pursuant to that constitutional provision, the
14 Legislature makes the following findings to demonstrate the interest
15 protected by this limitation and the need for protecting that interest:

16 In order to ensure that the California Vision Care Access Council
17 is not constrained in exercising its fiduciary powers and obligations
18 to provide consumers with the most accessible and affordable
19 vision care benefits augmenting the benefits available through the
20 California Health Benefit Exchange, the limitations on the public's
21 right of access imposed by Section 3 of this act are necessary.

22 SEC. 5. This act is an urgency statute necessary for the
23 immediate preservation of the public peace, health, or safety within
24 the meaning of Article IV of the Constitution and shall go into
25 immediate effect. The facts constituting the necessity are:

26 In order to provide Californians an organized, transparent
27 marketplace for the purchase of affordable, quality vision care
28 coverage, augmenting and supplementing the essential health
29 benefits available through the California Health Benefit Exchange
30 in a manner consistent with evolving federal rules, regulations,
31 and official guidance implementing the federal Patient Protection
32 and Affordable Care Act (Public Law 111-148), as amended by
33 the federal Health Care and Education Reconciliation Act of 2010
34 (Public Law 111-152), it is necessary that this act take effect
35 immediately.